

INFORMATION

FOR

Mr. John Buchan Advocate;

AGAINST

The Inhabitants, Traders within the Burghs of *Musselburgh* and *Dalkeith*.

THE *Royal Burrows* which make one of the Estates of Parliament had Anciently the only Right and Privilege of Trade, both by Exporting, Importing, and Retailing of Staple Commodities; So that no manner of Merchandice was reserved for Burghs of Regality, Barrony and others.

The Law did also annex a Burden proportionable to the Privilege, and the *Royal Burrows* have alwayes sustained the Burden of a 6th part of the Cesses and Taxations imposed upon the Nation.

Burghs of Regality and Barrony have long been in use to incroach and exercise Trade, but the *Royal Burrows* were fortified by many Laws Imposing severe Penalties upon Unfree Traders; until the Act of Parliament 1672, which varied very far from the strain of all former Laws, and in effect did Communicate a great part of the Trade without any share of the Burden of the Nation.

The Import of the Act 1672, was this, That whereas formerly all manner of Trade, even by Retailing was Restricted to the *Royal Burrows*, by this new Law, Unfreemen were allowed to export what they pleased, as also Import (in return of what they had Exported) all manner of Commodities, except Wine, Wax, Silk, Spices, and ~~Wool~~, and other materials for Dying; likewise they were allowed to Retail all Merchandice whatsoever, bought from Freemen Inhabitants of *Royal Burrows*.

This First and great Incroachment by way of Law, was in some measure remedied, and the *Royal Burrows* restored to a part of their Ancient privileges by the 12 Act, Parliament 1690; Whereby the Importing of all forraign Commodities and Merchandice by Sea or Land, was declared to belong only to Freemen Inhabitants of *Royal Burrows*; As also the Exporting of all Commodities by Sea, with a few exceptions, both as to the Exporting and Importing, which were still reserved to Unfreemen, as also the Retailing of Forraign Merchandice bought from Freemen; was thereby allowed to all the Leidges.

There hath been a more than ordinary tendency to Manufactory and Trade in this Nation of late, which hath been the occasion of many reflections how the Wealth and Trade of the Kingdom may be advanced.

The Example of all forraign Nations; And plain reason do evidently clear, that the Communication of Trade, is the most proper method to increase and improve it, and Equity and Justice require, that these who have the benefit of Trade should have it with the Burthen that Law hath annexed to it, and that as Anciently. All the Trade and Burden belonged to *Royal Burrows*; So any Communication of the Privilege should carry the Burthen along with it.

The *Royal burrows* who had long struggled to restrain Unfreemen, became at last sensible that the said restraint was prejudicial to the Nation: And therefore they did first open the way to a free Trade, by a Contract with Mr. John Buchan their Agent; And he did undertake the payment of a tenth part of their Cess, for the space of 3 or 5 Years, and was thereby enabled to Communicate the privilege of the *Royal Burrows*, to such Burghs as would agree to pay a share of the said Burden, and he was Assigned to the Penalties Imposed upon unfree Traders, to oblige them the more effectually to transact.

This Beginning being very acceptable and profitable to the Nation; His Majesty and Estates of Parliament did not only ratifie that Contract, but did Extend the Privileges of the *Royal Burrows*, against such as would not agree to accept of the Communication of Trade, and did fully restore and reintegrate all the former privileges of *Burghs Royal*, and wholly discharge all Persons in time coming, to exercise any kind of Trade, except Inhabitants of *Royal Burrows*, and these who

payed

pay a Proportion of the *quota* undertaken, to be payed by such as obtain the Communication of Trade, and ordained that these who had the Benefit of the Communication, should put all Acts of Parliament in Favours of *Burghs Royal* in full Execution, against *Unfree Traders*, who will not undertake to pay a proportion of the *Quota*.

It might have been expected, That *Unfree Traders* would cheerfully have imbraced the Opportunity and Privilege of Trade; But it happened ill, that at the same time, the *Royal Burrows* did perceive their Error and Damage to the Nation, by restraining Trade. That the *Unfree Traders* have become generally so backward, that they wholly reject the Advantage of the Communication offered, with a just proportion of Burden; And they will Trade contrary to the Law, and pay Nothing: Whereby, albeit some Burghs of Barrony and Regality, have transacted and agreed; Yet Mr. Buchan is in the Advance of above 2000 pound Sterling of his own Money, by payment of Cels, Missive Dues, and Charges, by Processes and otherways.

Amongst other *Unfree Traders*, Mr. Buchan pursues the Inhabitants of *Musselburgh* and *Dalkeith*, for exercising *Trafficque* and Trade, by Exporting and Importing, or Retailing Merchandice not bought from *Free-Meen*, before the Act of Parliament 1693, And for Export, Import, or Retail of any manner of Staple Commodities, whither bought from *Unfree Men*, or Others, since the Act of Parliament 1693.

It was Alledged for the Defenders; That albeit the *Ancient Laws* were very Rigorous against *Unfree Men*; Yet these being prejudicial to the NATION, were never executed, and were at last rescinded in a great part by the Parliament 1672, and thereafter the Act 1690, did enlarge the Privilege of *Royal Burrows*; And the Defenders claime only the Benefit of the Act 1690, which is nowayes Repealed or Innovated by the Act 1693.

It was Answered, The Pursuer founds upon the *Ancient Laws*; And especially upon the 84 Act, Parl: 6. Ja: 4. which provides that no person dwelling out with Burgh, use Merchandice, or yet rap or sell Wine, Wax, Silk, Spiceries, Wald, or sicklike Stuff, nor yet Staple Goods, &c. Which Act, tho Old, was not in desuetude, because all Laws in Favours of *Royal Burrows*, are frequently Ratified and Renewed, at least once in every Reign, and many Processes also founded on these Laws.

2do. It is true, The Act 1672, did very much alter the former Laws; But the Act 1690, restored them in part; And the Act 1693, did wholly Redintegrat the same, so that the pursuer doth positively contend, that the Act 1693, compleats what was begun by the Act 1690. And that therefore, the Defenders cannot be allowed to exercise any kind of Merchandice, by Retail of Staple Goods, though bought from *Freemen*, which was allowed by the Act 1690; unless they will accept of the *Communication of Trade*, and this is founded upon the expresse Tenor of the Act of Parliament 1693, Which bears, That his Majesty strictly prohibits all Parties whatsoever, to exercise any kind of Trade, under the Penalties contained in the Acts of Parliament, except Burgeses of *Royal Burrows*, and these who pay a Proportion of the *Quota*, payable be Burghs of Regality and Others.

The Extent of this General Prohibition, is yet more clear, by the following Clause of the same Act, ordaining these who have the Benefit of *Communication*, to put all Acts of Parliament in Favours of *Royal Burrows*, in full Execution against such *Unfree Traders* within their Bounds, as shall not pay and undertake for a Proportion of the said *Quota*.

By these Clauses it is plain as any thing can be, That Trade being designed to be communicated to all, without Exception, with a due Proportion of Burden, These who do not accept of the Burden, must wholly want the Benefit.

It was Replied for the Defenders, They still contend the Act of Parliament 1690 stands in vigour, and crave the benefit of it, and renunce the Communication of Trade, which was designed for their advantage, and not their damage, and they contend that the Act 1693, cannot be extended furdur, because it doth narrat and ratifie the Contract betwixt Mr. John Buchan and the *Royal Burrows*, in the hail Heads, Clauses and Articles thereof, And therefore that Act can never be interpreted or extended furdur, than in the Terms of the Contract, which Contract being before the Act of Parliament 1693. Did and could only relate to the Communication of that Trade, which was then peculiar to the *Royal Burrows*, and at that time *Unfree-men* were allowed to Retail what they bought from *Freemen* Inhabitants in *Royal Burrows*, and therefore the *Retailing Traders* still allowed.

2do. It is both the interest of the *Royal Burrows* and the Nation; that Merchandice imported by *Freemen*, be Retailed by all the Lieges, which will increase the Trade of the *Royal Burrows*.

It was Duplyed, The chief Point in debate lyes in that precise Point, whether the Act of Parliament 1693, doth restrain even Retailing of Merchandice bought from *Freemen*, which was allowed by the Act 1690; The pursuer contends the last Act doth restrain Retailing, because all the former Laws are redintegrated, and all manner of Trade prohibited to such as will not pay a proportion of the *Quota*, and it is beyond question that by the Ancient Law, and particularly the 84th. Act, parliament 6, Ja: 4. Retailing is prohibited, and that Prohibition is renewed

wed by the last Act 1693, and the Priviledges of *Royal Burrows* were ratified and renewed in every Reign.

And whereas it is alledged, that the Act 1693, is to be interpreted and regulat, by the Contract twixt the *Royal Burrows*, and the pursuer.

It is Answered, the Defenders are very much mistaken, for the Contract did and could only relate to the Communication of Trade that was then peculiar to the *Royal Burrows*, because it was not in the power of either of the Contracters to restrict the Priviledges, the Parliament reserved to Unfreemen. But when the Parliament considered that Contract, as the general Good of the Nation, they did not only ratifie and approve it, as to the Communication of Trade thereby allowed, but likewise the Parliament did extend and improve the design in many particulars, beyond what was done or could be projected by the Contract. As *1mo.* The parliament did direct and regulat the manner of Execution, which was granted as amply as for inbringing the dues payable by the *Royal Burrows*. *2do.* The Contract and Communication of Trade, being only to endure for three or five years, the Parliament did perpetuate the said Communication, so that as would accept of the benefit with the burden. *3tio.* All manner of Trade was thereby expressly prohibited to such as would not accept the benefit of Communication, and all former Laws in favours of *Royal Burrows* appointed to be executed, whereby severe penalties imposed upon unfree Traders by the Ancient Law, which had been Retrenched by the Parliament 1672, and 1690, were again reintegrated.

4to. Handy Craftsmen in Burghs of Regality and Barrony, who were never considered as Traders or Retailers, are by the last clause of the said Act, subjected to be stented for relief of the Burghs to which they belong, in the same way as Craftsmen within *Royal Burrows* are Stented, was expressly found by a solemn decision *in loco*, in the case of the Handy Craftsman of *Bosworth*, as is instructed by the Decree in Process.

In all these particulars the Contract with *Mr. John Buehan* is clearly extended, and the Act 1690 renovated, And the reason is plain, Because the Parliaments design was, and the interest of the Nation doth require, that Trade should be diffused, and Communicat to all the Leidges, and that Burghs of Barrony by the Communication should be in all points as *Royal Burrows*, so far as concerns Trade. And to make this Communication effectually, It is just and reasonable to lay an absolute restraint upon these who would not accept of the Communication, in which there is no unjust severity, as was in the former Laws; Because formerly a free Trade was not to be purchast, now it may be had at very just and easy rates.

As to what is pretended that it is the Interest of the *Royal Burrows* and the Nation, to allow retailing of Merchandice bought from free-men to all the Leiges.

It is Dupplied, neither the Law, the Interest of the *Borrowers* or Nation do allow it; *1mo.* The Act 1693, is clear for the Reasons above mentioned. *2do.* The design and Interest of the Nation in giving a full Communication, or an absolute restraint, there is no reason that any manner of Trade should remain with such as will bear no burden. These priviledges were charitably given when free Trade could be purchast at no rate: Now that restraint being taken off, these who will not bear burden, should have no Trade.

3tio. The Interest of the *Borrowers* doth not allow it, Because it is well known, that two thirds of the *Royal Borrowers* of the Kingdom, have neither Import or Export, but only Retail and have a third part of the Trade of these Burghs who do Import, is only retail, as is very well known; that the Communication of that Trade would be very prejudicial to the *Royal Borrowers*, if Retailers in *Royal Burrows* should pay great burdens, and Retailers in Burghs of Barrony and Regality altogether free: For whereas, formerly the Leidges were careful to become Burgeses of *Royal Burghs*, that they might retail, now they would become desolat if Retailers out with Burgh were free; And if that were allowed, the designed Communication, would prove abortive and the undertaker ruined thereby.

It was farther Alledged for the Defenders, that it were a matter of ill example, that the Pursuer should have an arbitrary power to restrain Trade unless the Defenders would agree with him, at any rate he pleased to impose, whereas they pretend that the proportioning of the burden, doth belong to the *Royal Borrowers*.

It is Answered, the pursuer opposes his Contract, and the Act of Parl: whereby he hath undertaken the tenth part of the burden, and is authorized to Execute the Laws in favours of *Royal Borrowers* against such who do not agree; But that the Lords may be satisfied, the Pursuer hath neither taken nor obtained any advantage he must again resume what he hath formerly, said that he is 20000 *Starling* out of his pocket which he is able to make appear. *2do* The Effect of the Act of Parliament authorizing the *Royal Borrowers* to proportion the burden, is by the Tenor of it suspended

pended till the Expiration of the Pursuers Contract which clears that during his Contract [the] Right lyes in him. And it were impossible to Extricate the business otherwayes, for if all were willing to come in together, It were easy to proportion a burden upon all, but when the Burghs stand Generally out, There must necessarily be some what left to Discretion.

3th. That the Lords may be satisfied, the Pursuer designs not any unreasonable stretch, he did formerly offer a Petition to the Lords, to which he adheres, declaring that he would be regulated in his Transactions by the Lords, or any of their number, and he never did, nor will require more of any Burgh of Barrony or Regality, than a just proportion, effeing to the Trade, compared with the next adjacent Burrows.

The Pursuer did further insist against the Denders for Importing, Exporting, and Retailing Merchandice bought from Unfreemen before the Act of Parliament 1693, and since the 1690, which by their own acknowledgement was not allowable.

It was Answered that the Defenders had Charters from the Kings Royal Predecessors, with ample priviledges of exercising the said Trade ratified in Parliament, which must defend them at law from bygoners.

It was Replied, such Charters are obtained *periculo petentis*, and ratified by the Parliament *Salvo jure*.

It was Duplyed, The King can unquestionably erect a Royal Burgh, and give the freedom of Trade, and therefore he can give the freedom of Trade, being a lesser gift by a Charter.

It is Triplyed, that the Law having introduced priviledges to Royal Burrows, exclusive of others, The King can make a Royal Burrow, which will thereby have the advantage of all the priviledges, with the burden also, but to grant the priviledges without the burden were to abrogate a Law, which ought not to be pretended, and needs no further to be refused.

In Respect whereof, It is Humbly and Confidently Expelled, that the Lords will find, That the Act of Parliament 1693, doth Redintegrat former Laws in Favours of the Royal Burrows, and doth restrain Burghs of Regality & Barrony, & Others, who will not pay a Share of the Quota, from any kind of Trade, by Exporting, Importing, or Retailing Staple Commodities whither bought from Burgeses of Royal Burrows or Others. That the Compositions and Transactions to be made for the said Commercation, are according as Parties can agree with the Pursuer, by the Interposition of any of the Lords of Council. 3th. That the Defenders are liable for bygone Importing, Exporting, or Retailing of Goods not bought from Free Men, before the 1693, and for all Exercise of Trade, by Retailing of Goods bought from Free Men, since the 1693.